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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,077	03/27/2001	Julie R. Bartholomew	1026-001	9777

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EXAMINER

TRAN, KHOI H

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

09/818,077

Applicant(s)

BARTHOLOMEW ET AL.

Examin r

Khoi H Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,8,9,36,37,40 and 48-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,9,36,37,40 and 48-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

KHOI H. TRAN  
PRIMARY EXAMINER

### **DETAILED ACTION**

The request filed on 03/03/2003 for a Request for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/818,077 is acceptable and an RCE has been established. An action on the RCE follows.

#### ***Claim Objections***

1. Claim 3 is objected to because it is dependent upon canceled claim 2.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claims 51 and 52, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 36, 37, 40, 51, 53, 55, and 57 are rejected under 35 U.S.C. 103(a) as being obvious over Brown 5,903,465 in view of Rigg et al. 5,785,960.

Brown '465 discloses a point-of-sale nail polish dispensing system (column 3, line 7) per claimed invention comprising. Brown's nail polish dispensing system (figure 1) dispenses nail polish into a package (8) and mixing it via a mixing mechanism (16).

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Brown's system includes a logic controller (26) to receive operating instructions from a device that measures a customer's specific skin requirements (column 3, lines 52-54). The dispensing system includes a plurality of chambers (figures 2 and 3) each having an outlet with a nozzle 10. The dispensing system is capable of operating manually or automatically (column 3, lines 50-55). Effects such as matte or dewy finish could be added to a dispensing formula. However, Brown '465 is silent as to the specific of retrieving recipe information upon an entry of a particular color selection.

Rigg '960 discloses a customized dermatological product dispensing system. Rigg '960 uses a spectrophotometer/colorimeter to measure a customer's skin. The skin color information is then calculated by a computer 6/10 for an optimal matching cosmetic formula. The formula is the recipe for controlling the dispensing action of the cosmetic color dispensers. Fragrances or moisturizers effects could also be added to the recipe. User's personal information and tailored formula are kept in a database for possible refills or possible subsequent adjustment. Rigg '960 uses unique identifiers such as bar codes or social security numbers for quick customer information access.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided a spectrophotometer/colorimeter system to Brown's dispensing system as desired by Brown '465, and taught by Rigg '960. The modification provides an optimal personalized cosmetic formula or recipe for a customer. It is obvious that the computer system in Brown's modified system would include recipe information concerning inputs of a particular skin color.

In regards to claim 51, it is obvious that additional effects such as fragrances, moisturizers, matte finish, or dewy finish could be added to the recipe in Brown's modified dispensing system.

In regards to claim 53, it is obvious that Brown's modified system is capable of dispensing lip gloss since it anticipates all claimed structural elements.

In regards to claims 55 and 57, It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have retained Brown user's information in a database and accessible via unique identifier(s) because it facilitates a quick retrieval of existing customer's preferences, as taught by Rigg '960.

5. Claims 1, 4, 5, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 5,903,465 in view of Rigg et al. 5,785,960 and further in view of Kraus et al. 4,871,262.

Brown '465 modified system discloses all elements per claimed invention as explained in paragraph 4 above, including housing (2, figure 1) that permits the viewing of a packaging bottle. However, Brown's modified system is silent as to the specific of the housing allowing the viewing of the ingredient containers.

Kraus '262 discloses of a customized cosmetic dispensing system. The housing of the dispensing system comprises windows (19 and 25) for the viewing of ingredient containers (column 3, lines 23-25). Kraus teaches that the windows enable an operator to observe the available level of ingredient in each container.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided Brown's dispensing housing (2) with viewing

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windows so that the level of the ingredient containers can be observed by an operator, as taught by Kraus '262. Such observation will allow for the timely replacement of emptied ingredient containers.

6. Claims 3, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 5,903,465 in view of Rigg et al. 5,785,960, in view of Kraus et al. 4,871,262 as applied to claim 1 above, and further in view of Lombardi et al. 6,177,093.

Brown '465 modified system discloses all elements per claimed invention as explained in paragraph 5 above. However, it lacks a personal viewing station and a camera for interfacing with a customer in providing virtual feedback to a user.

Lombardi '093 discloses a customized cosmetic system at a point of sale. The system comprises a camera (70, figure 9), a spectrophotometer, and computer (74) having a viewing screen (76). Said system provides virtual feed back as to how a customer would look with different colored cosmetic products (paragraph bridging columns 5 and 6). Such feature also enables a customer to modify a color that is best suited for each individual's preferences.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Brown '465 customized cosmetic system with such camera and computer system, as taught by Lombardi '093, because it provides visual feed back as to how a customer would look with different colored cosmetic products. Such feature also enables a customer to modify a color that is best suited for each individual's preferences.

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7. Claims 36, 48, 50-52, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenberg 4,967,938.

Hellenberg '938 discloses a single pod, customized liquid color dispensing system. The system includes a plurality of chambers radially disposed about a common axis. Each of said chambers has an outlet nozzle. The system comprises a computer 18 having a computer monitor for interacting with a customer to select a liquid formulation and communication information about a selection for use in controlling said dispensing system. Said computer is programmed such that the entry of a particular color selection into the computer will retrieve recipe information about the selection for dispensing to achieve the ultimate desired color. Said computer is further programmed to provide retail customer with an option of adding tinting effects to the liquid recipe. However, Hellenberg' s system is directed to a liquid paint dispensing environment instead of a liquid cosmetic environment. Nevertheless, it is obvious that such liquid paint dispensing system is applicable in a cosmetic environment, ie, dispensing of liquid lip gloss, since Hellenberg' s system anticipates all claimed structural elements. Furthermore, it is conceivable that the paint from Hellenberg' s dispensing system could be used cosmetically, i.e. for painting nails.

8. Claims 1, 4, 8, 9, 5, 36, 49, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenberg 4,967,938 in view of Kraus et al. 4,871,262.

Hellenberg system discloses all elements per claimed invention as explained in paragraph 7 above, including housing or cover 38. However, Hellenberg' s system is silent as to the specific of the cover 38 allowing the viewing of the ingredient containers.

Kraus '262 discloses of a customized liquid color dispensing system. The housing of the dispensing system comprises windows (19 and 25) for the viewing of ingredient containers (column 3, lines 23-25). Kraus teaches that the windows enable an operator to observe the available level of ingredient in each container.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided Hellenberg' s dispensing cover 38 with viewing windows so that the level of the ingredient containers can be observed by an operator, as taught by Kraus '262. Such observation will allow for the timely replacement of emptied ingredient containers.

9. Claims 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenberg 4,967,938 in view of Rigg et al. 5,785,960.

Hellenberg '938 discloses all elements per claimed invention as explained in paragraph 7 above. However, the computer 38 is silent as to the specific of storing information about a retail customer's selection.

Rigg '960, as explained in paragraph 4 above, teaches that customer's personal information and tailored formula are kept in a database for possible refills or possible subsequent adjustment. Rigg '960 teaches that unique identifiers such as bar codes or social security numbers further provide quick information access.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have retained Hellenberg user' s information in a database and accessible via unique identifier(s) because it facilitates a quick retrieval of existing customer's preferences, as taught by Rigg '960.



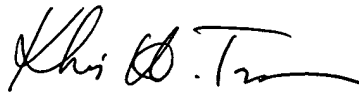
***Conclusion***

10. Applicant's arguments with respect to the claims of record have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and 7033057687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Khoi H Tran  
Primary Examiner  
Art Unit 3651

KHT  
April 2, 2003